

Ramchandra Shankar Deodhar and Others

Vs

The State of Maharashtra and Others

Writ Petition No. 299 of 1969

(CJI A. N. Ray, V. R. Krishna Iyer, D. G. Palekar, Y. V. Chandrachud, P. N. Bhagwati JJ)

12.11.1973

JUDGMENT

BHAGWATI, J. –

1. The short question that arises for determination in this petition under Art. 32 of the Constitution lies in a very narrow compass, but in order to arrive at its proper determination it is necessary to state the facts giving rise to the petition in some detail.
2. Prior to the reorganisation of the States, which took place on 1st November, 1956, by virtue of the provisions of the States Reorganisation Act, 1956, the petitioners were confirmed Tahsildars in the quondam State of Hyderabad which was then a Part B State. The rules of recruitment to the posts of Tahsildars which prevailed in the erstwhile State of Hyderabad provided that 1/3rd of the number of posts shall be filled by promotion from the lower ranks while the remaining 2/3rd shall be filled by direct recruitment on the basis of the result of competitive examination. The petitioners belonged to the latter category of directly recruited Tahsildars. The next higher cadre above that of Tahsildars was the cadre of the Deputy Collectors and recruitment to that cadre was governed by a notification issued by the Rajpramukh of Hyderabad State on the 15th September, 1955. This notification provided that all the vacancies of the cadre of Deputy Collectors shall be filled "only by promotion by selection" from the cadre of Tahsildars. It was common ground between the parties that both the cadres of Tahsildars as well as Deputy Collectors were State cadres.
3. On 31st August, 1956 the Parliament enacted the State Reorganisation Act, 1956 and that Act brought about reorganisation of almost all the States in India with effect from the appointed day, namely, 1st November 1956. The fasciculus of sections in Part II of the Act altered the territories of the existing State of Madras and Andhra Pradesh and brought into being various other new States. We are concerned here only with the formation of the new State of Bombay and we will, therefore, confine our attention to that. Section 8 constituted a new State of Bombay with territories drawn from various existing States, namely, Bombay, Hyderabad, Madhya Pradesh, Saurashtra and Kutch. The old State of Bombay ceased to exist and a new State of Bombay with considerably enlarged territories came into being. Since the new State of Bombay comprised territories coming from different existing States, that was naturally bound to give rise to new and complex problems of administration, particularly in the context of increased tempo of developmental activities including land reform measures and the necessity of integrating the services, introducing a unified pattern of administration and unifying the laws in the different territories brought together to form the new States of Bombay. The Government of Bombay, therefore, issued a resolution, dated 1st November, 1956, dividing the territories of the new State into six divisions and placing each Division in the charge of a Divisional Officer. The territories of former Saurashtra and Kutch States were so

grouped together in Rajkot Division, the territories drawn from the former Bombay State, save the District of East Khandesh in Ahmedabad, Bombay and Poona Divisions, the territories drawn from the former State of Madhya Pradesh in Nagpur Division and the territories drawn from the former Hyderabad State with the addition of East Khandesh District in Aurangabad Division. Since the service personnel from these different territories came to be allocated to the new State of Bombay, they had all to be fitted in to form a compact and homogeneous service, and it was, therefore, necessary to decide where and at what place they should be adjusted in the constitution of the new service. This process necessarily involved equation of posts, absorption of service personnel in the equated posts and determination of inter se seniority. The Government of Bombay, therefore, made the Allocated Government Servants' (Absorption, Seniority, Pay and Allowances) Rules, 1957, which we shall hereafter, for the sake of convenience, refer to as the Rules of 1957. The Preamble to the Rules of 1957 stated that they were made by the Governor of Bombay in exercise of powers conferred by Art. 309 of the Constitution and with due regard to the proviso to sub-s. (7) of Section 115 of the States Reorganisation Act, 1956 and with the approval of the Government of India obtained thereunder where necessary. The Rules of 1957 provided inter alia for absorption of all persons allotted for service to the State of Bombay and the determination of their inter se seniority in the cadre of absorption. Rule 3 dealt with the case of an allocated Government servant belonging to a local cadre, that is, a cadre other than a State cadre in a former State, but this rule had no application in Tahsildars of ex Hyderabad State because they belonged to a State cadre and not to a local cadre. Rule 4 enacted a general provision that the appointing authority shall issue an order absorbing each allocated Government servant, other than one covered by Rule 3, in an equivalent post after the equation of posts was made by the Government. The Government of Bombay thereafter, by a resolution dated 21st October, 1957, declared inter alia that the post of Mamlatdars in the former State of Bombay shall be deemed to be equivalent to the posts of Tahsildars allocated from the former State of Hyderabad. The petitioners and other Tahsildars allocated from the Ex-Hyderabad State were accordingly absorbed as confirmed Grade II Mamlatdars with effect from 1st November, 1956, and since they were serving in one or the other of the districts of the Ex-Hyderabad State which were grouped together with East Khandesh District to constitute Aurangabad division, it was directed that they should be treated as Grade II Mamlatdars in the Aurangabad division. Similarly by the same Government resolution dated 21st October, 1957 the posts of Deputy Collector in the former State of Bombay were declared to be equivalent to the posts of Deputy Collector allocated from the former State of Hyderabad.

4. Prior to the reorganisation of the States different rules of recruitment to the posts of Deputy Collector prevailed in the different regions which went to make up the reorganised State of Bombay. We have already referred to the rules contained in the Notification of the Rajpramukh of Hyderabad dated 15th September, 1955. Then there were rules enacted by the Government resolution dated 24th July, 1951 which prevailed in the former State of Bombay. There were also similar rules in the other States, namely, Madhya Pradesh, Saurashtra and Kutch. The allocated Mamlatdars/Tahsildars coming from these different States undoubtedly carried their respective conditions of service with them under Section 115, sub-s. (7) of the States Reorganisation Act, 1956, and those conditions of service included the right to be considered for promotion as Deputy Collector, but the different rules of recruitment which prevailed in the different regions as such became wholly in apposite and incongruous and ceased to be applicable in the new set up. The Government of Bombay, therefore, felt that it was necessary to have new rules of recruitment to the posts of Deputy Collector applicable uniformly throughout the territory of the reorganised State and, with that and in view, framed recruitment rules and issued them as appendix to a resolution dated 30th July, 1959. These rules we shall hereafter for the sake of convenience refer to as the Rules of 30th July, 1959. Rule 1 of

these Rules is material and it may be reproduced as follows:

"Appointment to the posts of Deputy Collector shall be made either by nomination or by promotion of suitable Mamlatdars.

Provided that the ratio of appointment by nomination and by promotion shall, as far as practicable be 50 : 50.

Provided further that half the vacancies reserved for appointment by promotion shall be filled by directly recruited Mamlatdars who have put in at least seven years in the posts including the period spent on probation."

It will be noticed that according to these rules vacancies in the posts of Deputy Collectors were to be filled from three sources : 50% by nomination on the basis of the result of competitive examination, 25% by directly recruited Mamlatdars who have put in at least seven years service including the period spent on probation and the remaining 25% by Mamlatdars promoted from the lower ranks in the Revenue Department. The reservation of 25% of vacancies in favour of directly recruited Mamlatdars was made by the second proviso to Rule 1, but in Writ Petition No. 845 of 1967 filed by one Kapoor against the Commissioner of Aurangabad Division and others, a Division Bench of the Bombay High Court, by its judgment dated 23rd March, 1968, declared that proviso void as being violative of the equal opportunity clause contained in Art. 16 of the Constitution. The petitioners in this petition disputed the correctness of this view taken by the High Court and contended that the proviso enacted in the second proviso to Rule 1 was a valid position. But of that little later when we deal with the arguments of the parties. It is, however, evident that if the second proviso to Rule 1 were invalid, 50% of the vacancies in the posts of Deputy Collector would have to be filled by nomination and 50% by promotion of Mamlatdars irrespective of whether they were directly recruited Mamlatdars or Mamlatdars promoted from the lower ranks. We may also at this stage refer to one other contention raised on behalf of the petitioners in regard to the Rules of 30th July, 1959. That contention was that the Rules of 30th July, 1959 did not apply to the allocated Tahsildars from Ex-Hyderabad State who continued to be governed by the recruitment and promotion rules of their erstwhile State. This contention was sought to be supported by reference to a letter dated 18th October, 1960 addressed by the Commissioner of Aurangabad Division to the first petitioner in which the Commissioner stated that the Rules of 30th July, 1959 "are not applicable to Marathwada officers as they are governed by recruitment and promotion rules of Ex-Hyderabad State which are not yet unified by Government. " The respondents admitted that such a letter was addressed by the Commissioner to the first petitioner, but said that that was due to a bona fide error, and in any event it was not binding on the State Government. The respondents urged that the Rules of 30th July, 1959 were unified recruitment rules applicable throughout the whole of reorganised State of Bombay and the promotion of the allocated Tahsildars from Ex-Hyderabad State to the posts of Deputy Collector was governed by those Rules and not by the Ex-Hyderabad rules. This controversy as to the scope and extent of the applicability of the Rules of 30th July, 1959 need not, however, detain us, as the same controversy was raised also before the Bombay High Court in Kapoor's case and was decided in favour of the State Government and in view of the cogent reasons given by the Bombay High Court in support of its decision the petitioners did not press their contention and agreed to proceed on the footing that the Rules of 30th July, 1959 governed recruitment to the posts of Deputy Collector throughout the reorganised Bombay State.

5. It may also be noted that, as in the case of Deputy Collectors, so also in the case of Mamlatdars, the Government of Bombay made unified rules of Recruitment by a resolution dated 19th

November, 1959. These Rules which we shall for the sake of convenience refer as the Rules of 19th November, 1959 came into force with effect from 1st January, 1960. Rule 1 of these Rules is material and it provided that appointment to the posts of Mamlatdars shall be made by nomination on the result of competitive examination or by promotion from amongst the members of subordinate revenue service, provided that as nearly as may be one half of the vacancies in the cadre of Mamlatdars shall be reserved for direct recruits by nomination "except in the case of Nagpur Division" where a special provision was made that this ratio would not apply till as persons recruited as Naib Tahsildars were either promoted as Tahsildars or rejected as not fit to be so promoted.

6. Now, according to the respondents, the cadre of Mamlatdars was a divisional cadre and not a State cadre and the reorganised State of Bombay being divided into six divisions there was a separate cadre of Mamlatdars for each division. This position was, however, disputed on behalf of the petitioners and their argument was that though it was true that Mamlatdars were allocated to different divisions, that was only for the sake of administrative convenience and it did not have the effect of splitting up the State cadre of Mamlatdars into divisional cadres. The cadre of Mamlatdars always remained one and indivisible and it was a State cadre. Now, whatever be the correct position in law, and we shall examine that presently, one thing is certain that the State Government proceeded on the basis that the cadre of Mamlatdars was a divisional cadre. The procedure that the State Government followed for making appointment to the posts of Deputy Collector by promotion of suitable Mamlatdars/Tahsildars from and after 1st November, 1956 was that for each division a select list of Mamlatdars/Tahsildars considered fit for promotion as Deputy Collector was prepared by a reviewing committee every year and from the divisional select list, promotions were made as officiating Deputy Collector which was admittedly a State cadre, "were made for the State as a whole after considering the claims of all officiating Deputy Collectors in the State as a whole." This procedure does not appear to have the warrant of any legislative rules or administrative orders, but there can be no doubt, from the affidavit in reply filed on behalf of the State Government, that it was in fact followed for making promotion to the posts of Deputy Collector. On 7th April, 1961, the Government issued a resolution laying down the "principles for regulating preparation and revision of select list of Mamlatdars/Tahsildars fit to be appointed as Deputy Collectors in the posts to be filled by promotion". It may be recalculated here that under the Rules of 30th July, 1959 the posts to be filled by promotion of suitable Mamlatdars/Tahsildars were 25% in case the second proviso to Rule 1 were held to be valid and 50% in case it was invalid. The Government resolution dated 7th April, 1961 provided that a committee should, in July, August each year, review the claims of the posts of Deputy Collector and should draw up a select list for each division of those who are considered by the committee fit for promotion, and paragraphs 3 to 7 of this Government resolution laid down the principles governing the preparation and revision of the divisional select lists. The promotions as officiating Deputy Collectors were made division-wise on the basis of the divisional select lists and confirmations in the cadre of Deputy Collector were made according to the combined seniority list of officiating Deputy Collectors. Paragraph 17 of the affidavit in reply filed on behalf of the State Government set out the detailed procedure followed by the State Government in this behalf. We shall occasion to refer to this procedure in detail when we examine the respective arguments of the parties and we need not, therefore, elaborate it at this stage. Suffice it to point out that it was in accordance with this procedure that the petitioners were promoted as officiating Deputy Collectors in the Aurangabad Division on different dates. The consequence of the adoption of this procedure, however, was that some of the allocated Mamlatdars/Tahsildars in other divisions, who were junior to the petitioners, became officiating Deputy Collectors earlier than the petitioners and were consequently entitled to be confirmed in the cadre of Deputy Collectors in preference to

the petitioners. The petitioners actually gave in paragraph 38 of the petition examples of three allocated Mamlatdars from Ex-Bombay State, who were admittedly appointed Mamlatdars later than the petitioners, and yet came to be promoted as officiating Deputy Collector's earlier than the petitioners. This was the main cause of grievance of the petitioners in the petition.

7. Before we conclude the narration of facts we must also refer to Government resolution dated 29th July, 1963 passed by the Government of Maharashtra which superseded the rule of seniority contained in an earlier Government resolution dated 21st November, 1941, and provided that "The seniority of promoted officers in the State Service" - and this would include the service of Deputy Collectors, - "should be determined..... according to the date of promotion to officiate continuously in the case of those appointed by promotion, irrespective of whether the appointments are made in temporary or in permanent vacancies, subject to the provisions of the following clauses : (i)..... (ii). The inter se seniority of officers promoted from the select lists prepared in consultation with the State Public Service Commission should be determined in accordance with the ranks in the select list. " This was the rule which governed the determination of seniority in the cadre of Deputy Collectors.

8. Now, various reliefs were claimed by the petitioners in the present petition, but, of these reliefs, the petitioners did not press those contained in prayers V, VI and IX to XII. the other reliefs were pressed by the petitioners and they may be subsumed under the following three grounds :

(A) The gradation list of Mamlatdars/Tahsildars allocated to the State of Bombay as on 1st November, 1956 was liable to be prepared in accordance with the principle of seniority laid down in Government resolution dated 21st November, 1941, and the Government resolution dated 29th July, 1963 had no application in the determination of such seniority.

(B) The Rules of 30th July, 1959 varied the conditions of service of the petitioner and other allocated Tahsildars from Ex-Hyderabad State to their disadvantage without the previous approval of the Central Government as required under the proviso to Section 115 sub-s. (7) of the State Reorganisation Act, 1956, and were therefore, null and void. If contrary to this submission, the rules of 30th July, 1959 were valid, so also was the second proviso to Rule 1 of these Rules, and the Bombay High Court was in error in declaring it to be invalid in Kapoor's case.

(C) The Government resolution dated 7th April, 1961, as also the procedure for making promotions to the posts of Deputy Collector followed by the State Government were violative of the equal opportunity clause contained in Art. 16 of the Constitution. The promotions to the posts of Deputy Collector should have been made on the basis of Statewise seniority of Mamlatdars/Tahsildars by selection from amongst Mamlatdars/Tahsildars throughout the State as a whole.

9. We shall proceed to examine these grounds in the order in which we have set them out, but before we do so we must refer to some objections of a preliminary nature raised on behalf of the respondents.

10. The first preliminary objection raised on behalf of the respondents was that the petitioners were guilty of gross laches and delay in filing the petition. The divisional cadres of Mamlatdars/Tahsildars were created as far back as 1st November, 1956 by the Government

resolution of that date, and the procedure for making promotion to the posts of Deputy Collector on the basis of divisional select lists which was a necessary consequence of the creation of the divisional cadre of Mamlatdars/Tahsildars, had been in operation for a long number of years, at any rate from 7th April, 1961, and the Rules of 30th July, 1959, were also given effect to since the date of their enactment and yet the petitioner did not file the petition until 14th July, 1969. There was a delay of more than ten or twelve years in filing the petition since the accrual of the cause of complaint and this delay, contended the respondents, was sufficient to disentitle the petitioners to any relief in a petition under Art. 32 of the Constitution. We do not think this contention should prevail with us. In the first place, it must be remembered that the rule which says that the Court may not inquire into belated and stale claims is not a rule of law, but a rule of practice based on sound and proper exercise of discretion, and there is no inviolable rule that whenever there is delay, the Court must necessarily refuse to entertain the petition. Each case must depend on its own facts. The question, as pointed out by Hidayatullah, C.J., in *Tilokchand Motichand v. H. B. Munshi*, "is one of discretion for this Court to follow from case to case. There is not lower limit and there is no upper limit. It will all depend on what the breach of the fundamental right and the remedy claimed are and how the delay arose. " Here the petitioners were informed by the Commissioner, Aurangabad Division, by his letter dated 18th October, 1960 and also by the then Secretary of the Revenue Department in January, 1961 that the rules of recruitment to the posts of Deputy Collector in the recognised State of Bombay had not yet been unified, and that the petitioners continued to be governed by the rules of Ex-Hyderabad State, and the Rules of 30th July, 1959 had no application to them. The petitioners were, therefore, justified in proceeding on the assumption that there were no unified rules of recruitment to the posts of Deputy Collector and the promotions that were being made by the State Government were only provisional, to be regularised when unified rules of recruitment were made. It was only when the petition in Kapoor's case was decided by the Bombay High Court that the petitioners came to know that it was the case of the State Government in that petition and that case was accepted by the Bombay High Court that the Rules of 30th July, 1959 were the unified rules of recruitment to the posts of Deputy Collector applicable throughout the reorganised State of Bombay. The petitioners thereafter did not lose any time in filing the present petition. Moreover, what is challenged in the petition is the validity of the procedure for making promotions to the posts of Deputy Collector whether it is violative of the equal opportunity clause - and since this procedure is not a thing of the past, but is still being followed by the State Government, it is but desirable that its constitutionality should be adjusted when the question has come before the Court at the instance of parties properly aggrieved by it. It may also be noted that the principle on which the Court proceeds in refusing relief to the petitioner on ground of laches or delay is that the rights which have accrued to others by reason of the delay in filing the petition should not be allowed to be disturbed unless there is reasonable explanation for the delay. This principle was stated in the following terms by Hidayatullah, C.J., in *Tilokchand v. H. B. Munshi* (supra) :

"The party claiming fundamental rights must move the Court before other rights come into existence. The action of Courts cannot harm innocent parties if their rights emerge by reason of delay on the part of the person moving the Court."

Sikri, J. (as he then was), also restated the same principle in equality felicitous language when he said in *R. N. Bose v. Union of India* : "It would be unjust to deprive the respondents of the rights which have accrued to them. Each person ought to be entitled to sit back and consider that his appointment and promotion effected a long time ago would not be set aside after the lapse of a number of years. " Here, as admitted by the State Government in paragraphs 55 of the affidavit in reply, all promotions that have been by the State Government are provisional and the position has

not been crystallised to the prejudice of the petitioners. No rights have, therefore, accrued in favour of others by reason of the delay in filing the petition. The promotions being provisional, they have not conferred any rights on those promoted and they are by their very nature liable to be set at naught, if the correct legal position, as finally determined, so requires. We were also told by the learned counsel for the petitioners, and that was not controverted by the learned counsel appearing on behalf of the State Government, that even if the petitions were allowed and the reliefs claimed by the petitioners granted to them, that would not result in the reversion of any Deputy Collector or officiating Deputy Collector to the post of Mamlatdars/Tahsildars; the only effect would be merely to disturb their inter se seniority as officiating Deputy Collectors or as Deputy Collectors. Moreover, it may be noticed that the claim for enforcement of the fundamental rights of equal opportunity under Art. 16 is itself a fundamental right guaranteed under Art. 32 and this Court which has been assigned the role of a sentinel on the qui vive for protection of the fundamental rights cannot easily allow itself to be persuaded to refuse relief solely on the jejune ground of laches, delay or the like.

11. The respondents then contended that though the petitioners were not parties to the petition in Kapoor's case, some of the respondents in that petition were directly recruited Tahsildars like the petitioners and the dispute of directly recruited Tahsildars as a class was agitated in that case and decided and consequently if the judgment of the Bombay High Court in regard to such dispute was incorrect, the petitioners could always apply for a review of that judgment, as did the parties in Shivdeo Singh v. State of Punjab. The petitioners had this alternative legal remedy of review available to them, and there was no reason why, instead of pursuing that remedy, the petitioners should have filed the present petition under Art. 32. This contention is also without force, and for three very good reasons. In the first place, it is difficult to see how the petitioners could have applied for review of the judgment of the Bombay High Court in Kapoor's case. The petitioners were not persons directly and immediately affected by the judgment and it could not be said that they were necessary parties to the petition who should have been heard before the judgment was given, as was the case in Shivdeo Singh v. State of Punjab (supra). The petitioners had, therefore, no locus standi to apply for review of that judgment. Secondly, the subject-matter of the present petition is, barring only one question which is common, namely, the question as to the validity of the second proviso to Rule 1 of the Rules of 30th July, 1959, wholly different from that of the petition in Kapoor's case, and asking for review of the judgment of Kapoor's case would be no remedy at all so far as the reliefs claimed in the present petition are concerned. Lastly, the remedy by way of review of a judgment given in another case in which the petitioners are not parties can hardly be said to be an adequate alternative legal remedy available to the petitioners.

12. The third preliminary objection raised on behalf of the respondents was that it was not competent to the Court to pronounce on the validity of the procedure for making promotion to the posts of Deputy Collector in the absence of other Mamlatdars/Tahsildars who might be interested in supporting the procedure. This objection is equally futile. Those who are already promoted according to impugned procedure and whose position vis-a-vis the petitioners would be likely to be affected by the invalidation of such procedure are before the Court as parties to the petition. Only those Mamlatdars/ Tahsildars are not made parties to the petition who are not made parties to the petition who are not promoted as officiating Deputy Collector or who are, even on the basis of the promotions made under the impugned procedure, junior to the petitioners. But these Mamlatdars/Tahsildars are not necessary parties to the petition, as they would not be adversely affected vis-a-vis the petitioners even if the impugned procedure were held to be invalid. All those who are necessary parties are before the Court and there is, therefore, no impediment in the way of the Court proceeding to decide the questions raised for its determination.

13. Having rejected these preliminary objections, we shall now turn to examine the grounds of challenge urged on behalf of the petitioners.

14. Re : Ground A : The argument under this ground of challenge was that the seniority of the petitioners vis-a-vis other Mamlatdars/Tahsildars in the reorganised State of Bombay was liable to be determined according to the principle laid down in the Government resolution dated 21st November 1941, and the Government resolution dated 29th July, 1963 had not application. This argument is a little difficult to comprehend. We fail to see how either of the two Government resolutions dated 21st November 1941, and 29th July, 1963 come into the picture in determining the seniority of the petitioners qua other allocated Mamlatdars/ Tahsildars as on 1st November, 1956. The inter se seniority of the Tahsildars and Mamlatdars allocated from the former State of Hyderabad, Madhya Pradesh, Bombay, Saurashtra and Kutch to the reorganised State of Bombay as on 1st November, 1956 would be governed by Rules 7, 8 and 9 of the Rules of 1957, and neither the Government resolution dated 21st November, 1941 nor the Government resolution dated 29th July, 1963 would have any application. Prayer II of the petition must accordingly be rejected.

15. Re : Ground B : The petitioners and other allocated Tahsildars from Ex-Hyderabad State had, under the Notification of the Rajpramukh dated 15th September, 1955, all the vacancies in the posts of Deputy Collector in the Ex-Hyderabad State available to them for promotion, but under the Rules of 30th July, 1959, 50% of the vacancies were to be filled by direct recruitment and only the remaining 50% were available for promotion and that too on divisional basis. This, according to the petitioners, constituted variation to their prejudice in the condition of service applicable to them immediately prior to the reorganisation of the State and since such variation was affected by the Rules of 30th July, 1959 without obtaining the previous approval of the Central Government as required under the proviso to Section 115, sub-s. (7) of the State Reorganisation Act, 1956, the Rules of 30th July, 1959 were invalid. This contention of the petitioners we find difficult to accept. All that happened as a result of making promotions to the posts of Deputy Collectors division-wise and limiting such promotions to 50% of the total number of vacancies in the posts of Deputy Collector was to reduce the chances of promotion available to the petitioners. It is now well-settled by the decision of this Court in State of Mysore, v. G. B. Purohit, that though a right to be considered for promotion is a service, mere chances of promotion are not. A rule which merely affects chances of promotion cannot be regarded as varying a condition of service. In Purohit's case (supra), the district-wise seniority of Inspectors was changed to State-wise seniority of sanitary Inspector was changed to Statewise seniority, and as a result of this change the respondents went down in seniority and became very junior. This, it was urged, affected their chances of promotion which were protected under the proviso to Section 115, sub-s. (7). This contention was negatived and Wanchoo, J. (as he then was), speaking on behalf of this Court observed : "It is said on behalf of the respondents that as their chances of promotion have been affected their conditions of service have been changed to their disadvantage. We see no force in this argument because chances of promotion are not conditions of service. " It is, therefore, clear that neither the Rules of 30th July, 1959, nor the procedure for making promotions to the posts of Deputy Collector division-wise varies the conditions of service of the petitioners to their disadvantage. The proviso to Section 115, sub-s. (7) is accordingly not attracted and the Rules of 30th July, 1959 cannot be assailed as invalid on ground of non-compliance with that proviso.

16. So far as the question of validity of the second proviso to Rule 1 of the Rules of 30th July, 1959 is concerned, there can be no doubt that the Bombay High Court was right in declaring it to be invalid. It can hardly be disputed that both the directly recruited Mamlatdars as well as the promotee Mamlatdars form one class. They are both known by the same designation. They have same scales

of pay. They discharge the same functions. The posts held by them are interchangeable. There is nothing to show that the two groups are kept apart. Both are merged together in the same class. It is not competent to the Government thereafter to discriminate between directly recruited Mamlatdars and promotee Mamlatdars in the matter of further promotion to the posts of Deputy Collector. That would be violative of Art. 16 of the Constitution. This is abundantly clear from the decisions of this Court in *Mervyn Coutindo v. Collector of Customs, Bombay*, and *S. M. Pandit v. The State of Gujarat*. In fact *S. M. Pandit's case* (supra) is directly in point. The facts of the present case are almost indistinguishable from *S. M. Pandit's case* (supra). The second proviso to Rule 1 of the Rules of 30th July, 1959 must consequently be held to be bad as being in conflict with Art. 16 of the Constitution.

17. Re : Ground C :- The first question that would logically seem to arise under this ground of challenge is whether in the reorganised State of Bombay the cadre of Mamlatdars was a State cadre or a divisional cadre. There is no doubt that in the former State of Hyderabad the cadre of Mamlatdars was a State cadre. What was the nature of the cadre of Mamlatdars in the former State of Bombay was a matter of dispute between the parties. The petitioners said that it was a State cadre, while the respondents asserted that it was a divisional cadre. It is not possible to resolve this controversy on affidavits as it raised a disputed question of fact, and we must, therefore, without finally deciding the question proceed on the basis that in the former State of Bombay the cadre of Mamlatdars was a divisional cadre as alleged by the respondents. Nothing turns upon this fact except to indicate that if the cadre of Mamlatdars in the reorganised State of Bombay was constituted into a divisional cadre, it was not something radically new, it was in line with what prevailed in the former State of Bombay. Now, let us examine what happened on the reorganisation of the States. The allocated Mamlatdars/Tahsildars coming from different regions were absorbed in the equated posts of Mamlatdars and the question arises as to how they should be integrated in the new service. Should they be formed into a State cadre as in Ex-Hyderabad State or into a divisional cadre as in Ex-Bombay State ? The State Government has to make up its mind on this question and, in the absence of legislative rules, it was competent to the State Government to take a decision in the exercise of its executive power under Art. 162 of the Constitution : vide *B. N. Nagarajan v. State of Mysore*, and *Sant Ram v. State of Rajasthan*. The State Government accordingly decided by Government resolution dated 1st November, 1958 that while recruitment to the posts of Mamlatdars should be "on all State basis", the cadre of Mamlatdars should be according to the divisions. It was contented on behalf of the petitioners that the constitution of Mamlatdars into divisional cadre was contrary to the Bombay Civil Service Classification and Recruitment Rules which were statutory rules made by the Governor under Section 241 of the Government of India Act, 1935. These Rules, said the petitioners, classified the service of Mamlatdars as a provincial service and that showed that the cadre of Mamlatdars was a provincial or State cadre. Now it is true that under the Bombay Civil Services Classification and Recruitment Rules the service of Mamlatdars is regarded as a provincial service as distinguished from subordinate service, (sic) recognised in these Rules is that whereas "appointments to provincial services..... shall be made by Government or by an authority empowered by Government in this behalf, " "recruitment to subordinate service shall be made by heads of departments and those heads of offices to whom powers have been delegated subject to the provisions of these rules and under the general control of Government". There is nothing in these Rules which says that a provincial service may not consist of divisional cadres. The organisation of Mamlatdars into divisional cadres cannot, therefore, be said to be in conflict with these rules and on that account invalid. In fact we find legislative recognition of the constitution of divisional cadres of Mamlatdars in the Rules of 19th November, 1969 which are admittedly statutory rules made under the proviso to Art. 309 of the Constitution. The proviso to Rule 1 proceeds on the basis that the

cadre of Mamlatdars is a divisional cadre and in reference to each divisional cadre goes on to provide that one half of the vacancies shall be filled by nomination and one half by promotion, except in case of divisional cadre of Nagpur division where this provision would not apply until after all persons recruited as Naib Tahsildars are either promoted as Mamlatdars or rejected as not fit to be so promoted. There can, therefore, be no doubt that right from 1st November, 1956 the cadre and not a State cadre. It is equally clear from the Government resolution dated 1st November, 1956 as well as the affidavit that the cadre of Deputy Collectors was a State cadre. The question is whether the procedure followed by the State Government for making promotions to the State cadre of Deputy Collectors from the divisional cadre of Mamlatdars was consistent with Art. 16 of the Constitution. Did it ensure equality of opportunity for promotion to Mamlatdars belonging to the different divisional cadres ?

18. While examining this question it is necessary to compare the procedure followed in regard to direct recruitment to the cadre of Deputy Collectors. As we have already pointed out above, the Rules of 30th July, 1959 provided that 50% of the vacancies in the cadre of Deputy Collectors shall be filled by direct recruitment. Since the cadre of Deputy Collectors was a State cadre 50% of the vacancies to be filled by direct recruitment were determined on the basis of vacancies in the cadre for the State as a whole and not for any particular division of the State. The direct recruitment was made on a State-wise basis without any attempt to see that there was division wise representation. But in regard to promotion by which the other 50% of the vacancies of the cadre of Deputy Collectors were to be filled the State Government adopted a wholly different procedure. Though a common seniority list of all the Mamlatdars in the State, irrespective of the division to which they belonged, could be prepared without any difficulty on the basis of the Rules, 1957 for the allocated Mamlatdars/Tahsildars and for the subsequent appointees, on the principle of continuous officiation upto 29th July, 1963 and thereafter according to the rule laid down in Government resolution dated 29th July, 1963 and a common State-wise select list could also be made of Mamlatdars found for promotion as Deputy Collectors and promotion to the cadre of Deputy Collectors could be made on the basis of such State-wise select list, the State Government did not choose to follow this method and instead made promotions to the cadre of Deputy Collectors which was a State cadre on the basis of divisional select lists. The procedure followed by the State Government for making promotions was as follows. The Review Committee prepared every year for each division a separate divisional select list of those Mamlatdars who were found fit for promotion as Deputy Collectors. Where Mamlatdars were brought on the divisional select list at the same time, their names were ordinarily arranged according to their seniority in the divisional cadre but in case of Mamlatdars of outstanding merit, a higher rank might be given to him in the divisional select list than that warranted by his seniority. Subject to this provision, the seniority of Mamlatdars in the divisional select list was determined by the date of their entry in the list. When a vacancy arose in the post of Deputy Collectors in a division and it was likely to last for three months or more, the Mamlatdar whose name was highest in the divisional select list and who was not already officiating, was promoted as officiating Deputy Collector in the vacant post. The name of such Mamlatdar, though promoted as officiating Deputy Collector, however, continued in the divisional select list until he was confirmed in the cadre of Deputy Collectors or retired from service whichever happened earlier. Now, the ranking in the divisional select list did not remain constant. There was periodical review of the work of the officiating Deputy Collectors and on such review, the ranking in the divisional select list was adjusted so as to reflect the assessment of the relative merits of the officiating Deputy Collectors, e.g., an officiating Deputy Collector who had a better record of service might be placed higher than another with less meritorious record and so on and so forth in descending order of merit. The promotions as officiating Deputy Collector were thus made for each division separately on the

basis of its divisional select list in which the ranking kept on changing periodically as a result of review and assessment. Then for the purpose of confirmation in the cadre of Deputy Collectors, a combined seniority list of officiating Deputy Collectors from all divisions was prepared. The procedure followed for the purpose of preparing the combined seniority list was followed. In the first place "deemed" dates of continuous officiation were given to the officiating Deputy Collectors from each division with a view to ensuring that their inter se ranking in the divisional select list was not affected by the fact that an officer lower in rank in the divisional select list might have been officiating as Deputy Collector for a longer period than another in higher rank. This was done by providing that the officer who was highest in the rank in the divisional select list should be given the date of continuous officiation of the officer who had the longest period of officiation as Deputy Collector and the officer next to him in rank should be given the date of continuous officiation of the officer who had officiated next longest as Deputy Collector and so on till the dates of continuous officiation of all officers were adjusted so as to reflect their inter se seniority in the divisional select list. Thus, if A, B and C were officiating Deputy Collectors in a division having 1st January, 1960, 1st July, 1960 and 1st January, 1961, respectively, as their dates of continuous officiation and in the divisional select list their ranking was first C, second B and last A, their deemed dates of continuous officiation would be 1st January, 1960 for C, 1st July, 1960 for B and 1st January, 1961 for A. Then on the basis of the deemed dates of continuous officiation given to the officiating Deputy Collectors in each division, a combined State-wise seniority list of officiating Deputy Collectors was prepared and confirmations in the cadre of Deputy Collectors were made in accordance with the seniority in such combined State-wise seniority list. This was the procedure followed by the State Government and it has to meet the challenge of Art. 16 of the Constitution.

19. Now, it is clear that this procedure suffers from a serious infirmity in that it provides for promotions to the State cadre of Deputy Collectors to be made on the basis of divisional select lists. That clearly amounts to denial of equality of opportunity to Mamlatdars in the State in the matter of promotion to the cadre of Deputy Collectors. If a Mamlatdar aspires to be promoted to the cadre of Deputy Collectors which is the next higher cadre of promotion for him, he has to be promoted first as officiating Deputy Collector. It is only after he is promoted as officiating Deputy Collector that he can become eligible to be confirmed in the cadre of Deputy Collector. But, in order to be promoted as officiating Deputy Collector, he has to wait until a vacancy occurs in the post of Deputy Collector in his division. Even if he is senior to a Mamlatdar in another division and more suitable, he cannot be promoted to officiate in a vacancy which arises in the other division. His opportunity for promotion is limited to a vacancy in his own division. The consequence is that if a vacancy in the post of Deputy Collector arises earlier in the division, a Mamlatdar in the select list of that division would get promoted as officiating Deputy Collector earlier than a Mamlatdar in another division where a vacancy in the post of Deputy Collector arises later and, subject to the operation of the rule of deemed dates of continuous officiation that would mean that former would gain entry in the cadre of Deputy Collector earlier than the latter, even though the former may be junior and less suitable than the latter. The entry in the cadre of Deputy Collectors is thus made to depend on the assessment of the relative merits of a Mamlatdar vis-a-vis the other Mamlatdars in the State, but on the fortuitous circumstances as to when a vacancy in the post of Deputy Collector arises in the division to which the Mamlatdar belongs. This is clearly violative of the equal opportunity clause because it is wholly related to the object and purpose of promotion which is to ensure an efficient cadre of Deputy Collectors and in fact negates it. It must be remembered that the cadre of Deputy Collectors is a State cadre and for promotion to such State cadre every Mamlatdar must have equal opportunity to be considered. Where promotion is made by selection on the basis of merit-cum-seniority, every Mamlatdar should be able to enter the lists, and he should have equal

opportunity with others for being considered for promotion. There must be one common door for entry into the cadre of Deputy Collectors through which every Mamlatdar should be equally entitled to enter, provided he is selected on the application of the principle of merit-cum-seniority. There cannot be six doors of entry, one door available exclusively for the Mamlatdars of each division. That is bound to create inequality of opportunity in the matter of promotion. It is true that confirmations in the cadre of Deputy Collectors are made on the basis of combined list of officiating Deputy Collectors, but that does not cure the infirmity in the mode of promotion. The allotment of deemed dates of continuous officiation cannot help retrieve who have had no opportunity to be promoted as officiating (sic) of higher seniority or better merit, but purely on account of lack of adequate vacancies in the post of Deputy Collector arising in their division. Moreover, since the officiating Deputy Collectors are still substantively Mamlatdars and it is in virtue of their being Mamlatdars that they are eligible to be promoted to the cadre of Deputy Collectors by confirmation, the combined seniority list of officiating Deputy Collectors is in truth and reality nothing but a combined select list of Mamlatdars prepared by amalgamating the divisional select lists. The amalgamation of the divisional select lists is not made on a comparative assessment of the relative merits of the Mamlatdars in the divisional select lists so as to produce a combined seniority list based on merit-cum-seniority, but it proceeds on the basis of deemed dates of continuous officiation as Deputy Collectors given to Mamlatdars in their respective divisional select lists. The giving of deemed dates of continuous officiation no doubt reflects the relative merits of the Mamlatdars in each division taken as a separate unit, but it does not seek to adjust the seniority of the approved Mamlatdars in all the divisions taken as a whole on the basis of assessment of their relative merits. It does not, therefore, eliminate the inequality of treatment which inheres at the initial stage of promotion as officiating Deputy Collectors. The vice of inequality of opportunity continues to inhibit promotions to the cadre of Deputy Collectors. The procedure followed by the State Government in making promotions must, therefore, be held to be violative of Art. 16 of the Constitution.

20. The respondents, however, relied very heavily on the decision of this Court in *Ram Saran v. Deputy Inspector General of Police*, and contended that this decision gives approval to the mode of promotion adopted by the State Government in the present case. We do not think so. Read superficially it might appear that this decision supports the contention of the respondents, but if we scrutinise it closely, it would be apparent that not only it does not render any assistance to the respondents but actually goes against them. To understand the true ratio of this decision it is necessary to notice the fact in some detail. The police force in the State of Rajasthan was constituted under Police Act, 1861, and under Section 2 of that Act it was deemed to be one police force for the whole State under the control and supervision of the Inspector General of Police. The entire area of the State was, for administrative convenience, divided into four ranges, each under the charge of a Deputy Inspector General of Police. Each range comprised various district organisations under Superintendents of Police. The initial recruitment to be the police force was in the rank of constable and that was done within the district by the Superintendent of Police. The cadre of constables was a district cadre. The promotion from the cadre of constables to the next higher cadre of head constable was made within the district by the Superintendent of Police on the basis of district-wise select list of approved constables. The cadre of head constables was also a district cadre. The further promotion from the cadre of head constables to the cadre of Sub-Inspectors was made within the range by the Deputy Inspector General of Police and for this purpose all the head constables in the range were considered as one group for promotion to the rank of Sub-Inspectors and promotion was made on the basis of range-wise select list of approved head constables. Whenever a vacancy in the post of Sub-Inspector of police arose in a range, the Deputy Inspector General of Police of that

range would make promotion from the select-list of his range according to seniority and conversely if reversions were to take place, the junior most head constable officiating as Sub-Inspector in the range would revert. The cadre of Sub-Inspectors was thus clearly a range cadre. So far as the next higher cadre of Inspectors is concerned, that was a State cadre and promotion to that cadre was made by the Inspector General of Police for the State as a whole on the basis of State-wise select list of approved Sub-Inspectors. Now what happened in this case was that the petitioner who was promoted to the rank of Sub-Inspector from the rank of head constable was reverted when a permanent Sub-Inspector returned to the range, as he was the junior-most approved head constable (sic) who were junior to him and yet continued to officiate as Sub-Inspectors. The petitioner thereupon filed a petition under Art. 32 of the Constitution challenging the range-wise system of promotion from the rank of head constable to the rank of Sub-Inspectors inter alia on the ground that the whole police force being one, the practice of promotion of head constable to officiate as Sub-Inspectors range-wise amounted to denial of equality of opportunity under Arts. 14 and 16 of the Constitution. While dealing with this ground of challenge the Court pointed out that at the level of constables, and head constables local knowledge was conducive to administrative efficiency and that was the reason why recruitment of constables, and even for the post of Sub-Inspector, local knowledge was regarded as useful, and, therefore, while widening the area, selections to the post of Sub-Inspector were confined within the range. In regard to the post of Inspector, however, local knowledge was not insisted upon as the work of Inspector is mostly of a supervisory nature and hence promotion to the rank of Inspector was provided on State-wise basis. The Court then proceeded to observe :

"If the State has evolved the three tier system of giving promotion from constables to Sub-Inspectors and from Sub-Inspectors to Inspectors which is done in the interest of administrative efficiency of the police force, it cannot in our opinion be said that such a system should be struck down on the ground that the police force being deemed one for the whole State, promotion throughout from constable upwards should be on the basis of the whole State. Apart from administrative difficulties which may arise if all promotion of members in the police force is concentrated in the hands of the Inspector General of Police, which is what the petitioner is contending for, it seems to us that there is a good deal of force in the contention of the State that the three tier system works for the efficiency of the police force of these ranks and is designed with that object."

On this reasoning the Court negated the constitutional challenge to the validity of the system of promotion.

20-A. It will be seen from this analysis of the reasoning of the decision in Ram Saran's case (supra) that far from negating the contention of the petitioners, it goes a long way towards supporting it. In Ram Saran's case (supra) the cadre of Sub-Inspectors was a range and promotion to that cadre in each range was made on the basis of select list of approved head constables from that particular range. This mode of promotions which confined promotions from head constables to Sub-Inspectors within the range was upheld by this Court because it was calculated to make available the advantage of local knowledge in a post where such local knowledge administrative efficiency of the police force. But the basic feature underlying this mode of promotion was, and that is vital to the understanding of the true ratio of this decision, that in respect of promotion to the range cadre of Sub-Inspectors all the head constables in the range were eligible for being considered and promotion to such range cadre was made on the basis of range-wise selection list prepared by taking into account the relative merits of all the head constables in the range. Every head constable in the range

had, therefore, equal opportunity of promotion to the range cadre of Sub-Inspectors. Here in the present case, however, as we have already pointed out above, the procedure adopted by the State Government provided for promotion to the State cadre of Deputy Collectors not on the basis of State-wise select list, but on the basis of divisional select lists of Mamlatdars. This is a very vital point on which the mode of promotion in the present case differed from that in Ram Saran's case (supra). If the cadre of Deputy Collectors had been a divisional cadre, there would have been no objection in providing that the promotion to that cadre shall be division-wise on the basis of divisional select lists. Then the analogy in Ram Saran's case (supra) would have been complete. But here the cadre of Deputy Collectors was admittedly a State cadre and not a divisional cadre and division-wise promotion to such cadre on the basis of divisional select lists could not, therefore, be justified on the ratio of the decision in Ram Saran's case (supra). It may be noticed that in Ram Saran's case (supra) in regard to promotion to the State cadre of Inspectors, the procedure followed was to have a Statewise select list of approved Sub-Inspectors from all over the State and to make promotion to the State cadre of Inspectors on the basis of such State-wise select list. The promotion to the State cadre of Inspectors was not made range-wise on the basis of separate select lists of Sub-Inspectors of each range. If that had been done, and upheld by this Court, the argument of the respondents would have been almost unassailable. But the promotion to the State cadre Inspectors was on a State-wise basis. The ratio of the decision in Ram Saran's case (supra) does not, therefore, support the contention that promotion to a State cadre can be made on the basis of divisional select lists. On the contrary, it suggests that if the cadre is a divisional cadre, there can be division-wise promotion on the basis of divisional select lists, but if it is a State cadre, promotion must be on State-wise basis so that every officer in the State has equal opportunity of promotion to the State cadre. Ram Saran's case (supra), therefore, impliedly supports the view which we have taken on a priori reasoning. The respondents faintly attempted to argue that in the present case there was an intermediate cadre officiating Deputy Collectors between the cadre of Mamlatdars and the cadre of Deputy Collectors and promotion from the cadre of Mamlatdars lay to the cadre of officiating Deputy Collectors and it was from the cadre of officiating Deputy Collectors that one could obtain promotion to the cadre of Deputy Collectors. The cadre of officiating Deputy Collectors was a divisional cadre, and, therefore, promotion to it was divisional-wise on the basis of divisional select lists, while the cadre of Deputy Collectors was a State cadre and hence promotion to it was State-wise on the basis of the combined seniority list of all officiating Deputy Collectors in the State. This was in accord with the pattern of promotion in Ram Saran's case (supra) and was, therefore, valid. This contention of the respondents is without force. The premises on which it is founded is incorrect. It is wholly contradicted by the Rules of 30th July, 1959 which are admittedly statutory rules. These rules provide that appointment to 50% of the posts of Deputy Collectors shall be made by "promotion of suitable Mamlatdars". The promotion that is spoken of in these Rules is promotion from the cadre of Mamlatdars to the cadre of Deputy Collectors. These Rules completely negative the existence of any intermediate cadre of officiating Deputy Collectors. It is difficult to see how in the face of these Rules which have statutory effect, it can ever be contended that promotion to the cadre of Deputy Collectors was not from the cadre of Mamlatdars but from the so called cadre of officiating Deputy Collectors. Of course it is true that Mamlatdars cannot be promoted to the cadre of Deputy Collectors unless he has first officiated as Deputy Collectors, but when he is promoted, it is from the cadre of Mamlatdars and not from any supposed cadre of officiating Deputy Collectors. In fact there is no legislative rule or executive order providing for the creation of such an intermediate cadre of officiating Deputy Collectors.

21. We, therefore, hold that the second proviso to Rule 1, of the Rules of 30th July, 1959 is void as being violative of Art. 16 of the Constitution. We also declare the procedure for promotion to the

cadre of Deputy Collectors followed by the State Government to be invalid on the ground that it denies equality of opportunity of promotion and is, therefore, hit by Art. 16 of the Constitution. The Government resolution dated 7th April, 1961 must also be quashed and set aside for the same reason. We direct the State Government to readjust the promotions as officiating Deputy Collectors as also the confirmations in the cadre of Deputy Collectors in the light of the principles laid down in the judgment. The readjustment shall be made with retrospective effect and the petitioners shall be given the benefit of seniority, pay and other allowances from the respective dates on which they would have been promoted, had the promotions been made on the correct basis indicated in the judgment, subject to the qualification that so far as arrears of pay and other allowances are concerned, they may not be given for the period prior to the filing of the petition. The first respondent will pay the costs of the petition to the petitioners.

22. Before we part with this case we may add a paragraph by way of epilogue. We find in the course of our judicial experience, and we notice this fact with some apprehension, that members of public services in alarmingly large numbers resort to legal remedies in Courts of law for agitating their grievances in regard to service matters. This phenomenon is symptomatic of sense of injustice and subversive of that undivided and devoted attentions to official duties which is so essential for efficient and dynamic functioning of the Government. It can, therefore, hardly be over-emphasised that there is great need for simplifying and streamlining service rules and giving them statutory shape so as to promote contentment among the services by extending the areas of equal treatment and imparting stability to conditions of service. It is not desirable that the fortunes of such a vital and strategic instrument of Government as the public services be left to be governed by mere departmental resolutions and executive instructions. These cannot take the place of statutory rules which alone can impart stability and security and ensure observances of the rule of law. Legal rules must govern the recruitment and conditions of public servants so that there is no arbitrariness or inequality in State action in regard to them and the rule of law is not eroded. And such should preferably be framed without avoidable delay and after consultation with groups which apprehend discriminatory treatment as that would go a long way to produce a sense of contentment and satisfaction. We make these observations not with a view to casting any reflection on the administration but to highlight a problem which has come to our notice quite often, in the hope that it will help appreciate the social dimensions of the problem and the damage to public interest which may be likely to result if the problem is not promptly and satisfactorily resolved.

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